

C. REMARKS

In light of the following, applicant requests reconsideration of the matters raised in the Official Action, and early favorable action of allowance.

Regarding the Specification:

Pursuant to the Examiner's requirement, the word "said" is removed from the abstract, thus putting it in form satisfying the Examiner's outline of requirements for an abstract.

Re the Examiner's Claim Objections

Regarding claim 1, please note that lines 8 and 9 do not recite the plural of "recess." What claim 1 does recite is "transverse width of said recess." The said recess refers back to the "internal recess" earlier recited. This language is clearly supported at the top of page 7 by the language

"the width of the internal recess is defined by the inside surfaces of the side walls 16 and 18."

Note that claim 4 recites "wherein said internal recess has internal lock recesses bordered by said inwardly projecting border flanges and by said lip flanges." In other words, the internal recess of the whole of the rail embraces but is not the same as the "internal lock recesses." Note that page 7 of specification, at the second line at the top, recites "Internal lock recesses 32 and 34 (see FIG. 4) are thus formed and are bordered or defined by the border flanges 22 and 24 and the lip flanges 26 and 28 as well as the upper part of the side wall 16 and 18."

In other words, for a change of language in claim 1 to be made in the manner suggested by the Examiner, one would inherently introduce confusion since there is never any discussion in applicant's specification dealing with a first recess and a second recess opposite the first.

It is thus suggested that we presently have clarity for claiming. "Internal recess" is distinct from "internal lock recesses."

Withdrawal of the Examiner's objection to claim 1 and dependent claim 2 is accordingly most courteously requested.

Regarding claim 5, counsel is puzzled by the Examiner's objection. The recitation involved is "cross brace beams are telescopeable but fixed against telescoping movement on said ramp". There is nothing contrary about that. The term "telescopeable" obviously means they are capable of being telescoped and the fact that they are fixed against telescoping movement for a realistic ramp is beyond cavil. The word "movement" is not to be ignored. If the telescopeable cross beam were not fixed against telescoping movement on the ramp, one can only conjecture as to the chaos that would arise in using the ramp under practical conditions. Thus, withdrawal of this objection to claim 5 is most respectfully requested.

Regarding claim 13, amendment has been made to correct an inadvertent error. The Examiner is absolutely correct; the intended language was "The ramp of claim 11...".

Claim Rejections — 35 U.S.C. 103

All rejections under §103 are based on a combination of three references,

namely Crifase et al. (6,327,990) in view of Smith (5,449,247) and further in view of Van Gijsel et al. (6,290,426).

The problem with this base combination is that it improperly relies upon applicant's teaching as the blueprint for selecting fragments from the references and then combining them in a manner that requires distortion of the references — a distortion involving re-engineering of the cited references — without the slightest basis for the person of ordinary skill to be motivated to select just the right parts from each reference and put them together in a manner as argued in the Official Action — a “putting together” that is contrary to law and relies solely on applicant's teaching as the blueprint to “put the parts together.”

Regarding Crifase et al.: Their elongated channel rail is literally a pure U-shaped beam. The Examiner recognizes that the Crifase beam lacks a slot narrower than the transverse width of the recess at the top of the beam. The only suggestion Crifase et al. make for rollers is to fasten them on shafts extending between the side edges of the beam. Nothing in Crifase et al. suggests a possible beam or rail having a slot narrower than the transverse width of an internal recess inside the beam. In fact, that sort of thinking is totally strange to anything that Crifase et al. present to the world. The main teaching of Crifase et al. is that of using stakes driven into the ground and using them to hold parts of their structure together.

Regarding Smith, please recognize that Smith has a single elongated frame member 14 (or a triangular frame arrangement of 114 or 116 as shown in FIG. 5 of Smith). At column 3 of Smith, starting at about line 33, the description emphasizes that U bolts attach

a cross arm 44 to a lengthwise frame 14. Then the emphasis is that a roller tilt arm 46 is attached to cross arm 44 with a U bolt 48. Pivot pins 52 and 58 allow tilt to conform to a boat hull bottom. But please note that the entire assembly of tiltable features has to be moved along the main frame element 14. Absolutely nothing suggests a pair of elongated channel rails as required by applicant. Absolutely nothing suggests applicant's longitudinally aligned internal recess as well as a longitudinally aligned elongated slot for access into that internal recess (and the fact that the slot is narrower in transverse width than the recess).

Even more cogently, nothing in Smith suggests exactly what from Smith should be used in combination with what from Crifase et al. to arrive at anything even remotely resembling applicant's invention.

Van Gijsel et al. is then added by the Examiner, and this addition compounds the hodgepodge of elements and gives a nice grab bag for the person of ordinary skill to suffer utter confusion.

In re Mercier, 515 F.2d 1161, 185 USPQ 774,778 (CCPA 1976) cautioned:

The board's approach amounts, in substance, to nothing more than a hindsight "reconstruction" of the claimed invention by relying on isolated teachings of the prior art without considering the over-all context within which those teachings are presented. Without the benefit of appellant's disclosure, a person having ordinary skill in the art would not know what portions of the disclosure of the reference to consider and what portions to disregard as irrelevant, or misleading.

In *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 227 USPQ 543, 547, 551 (Fed. Cir. 1985), the court stated:

The invention must be viewed not with the blueprint drawn from the inventor, but in the state of the art that existed at the time.

* * *

Not only must the claimed invention as a whole be evaluated, but so also must the references as a whole so that their teachings are applied in the context of their significance to a technician at the time — a technician without our knowledge of the solution.

Today, in view of *Dickinson v. Zurko*, 527 U.S. 150, 50 USPQ2d 1930 (1999), we are governed by the rule of “substantial evidence” — and avoidance of arbitrary action or other action not in accordance with law — all in replacement of “clearly erroneous.” Even so, basic principles espoused by the Court of Customs and Patent Appeals as well as the Federal Circuit and the Supreme Court have made it clear that any suggestion or incentive or motivation to combine references has to come not from an applicant’s teaching. To do so would result in hindsight wisdom rejections that clearly do not constitute “substantial evidence.” The fact that the basic principles remain in force was stressed in *In re Lee*, 61 USPQ2d 1430, 1433, 1434:

The need for specificity pervades this authority. *See, e.g., In re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000) (“particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed”); *In re Rouffet*, 149 F.3d 1350, 1359, 47 USPQ2d 1453, 1459 (Fed. Cir. 1998) (“even when the level of skill in the art is high, the Board must identify specifically the principle, known to one of ordinary skill, that suggests the claimed combination. In other words, the Board must explain the reasons one of ordinary skill in the art would have been motivated to select the references and to combine them to render the claimed invention obvious.”); *In re Fritch*, 972 F.2d 1260, 1265, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992) (the examiner can satisfy the burden of showing obviousness of the combination “only by showing some objective teaching in the prior art or that knowledge

generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references").

Orthopedic Equipment Co. v. United States, 217 USPQ 193, 199 (CAFC 1983)

put the issue in classic terms:

It is wrong to use the patent in suit as a guide through the maze of prior art references, combining the right references in the right way to achieve the result of the claims in suit. Monday morning quarterbacking is quite improper when resolving the question of nonobviousness in a court of law.

Van Gijsel et al., of course, is non-analogous prior art, as will be shown, but at this point let us emphasize that Van Gijsel et al. deals with a connector for a strut rod, not a hull roller. There is nothing to suggest any hull support in the Van Gijsel teaching. Still more important is the fact that the structure of Van Gijsel conflicts with Smith and Crifase et al. What Van Gijsel teaches is an anchor to a U-shaped beam; but beyond that, Van Gijsel provides no suggestion for any structure (rollers or otherwise for supporting a boat hull). Simply put, Van Gijsel has nothing that helps Smith and Crifase et al. Instead, Van Gijsel confounds a person of ordinary skill.

The issue is what is taught by the references. As noted by the Board of Patent Appeals and Interferences in *Ex parte Metcalf*, 67 USPQ2d 1633, 1635 (nonprecedent, 2003):

The U.S. Court of Appeals for the Federal Circuit has stated that “[t]he mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification.” *In re Fritch*, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992) (citing *In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984)). Although this statement is couched in terms of modifying the prior art, we hold that a similar one applies to

combining teachings found in the prior art. Specifically, the mere fact that teachings found in the prior art could be combined as proposed by an examiner does not make the combination obvious “absent some teaching, suggestion or incentive supporting the combination.” *Carella*, 804 F.2d at 140, 231 USPQ at 647 (citing *ACS Hosp. Syss., Inc.*, 732 F.2d at 1577, 221 USPQ at 933).

Here the references in fact cannot be combined when what they show is considered; but even if they hypothetically could be combined as suggested by the Examiner, there is nothing to suggest that it could be desirable to do so.

In essence, the starting point of combining Van Gijsel et al. with hull support teachings such as Smith becomes puzzling because one does not get a good idea as to what of Van Gijsel et al. should be incorporated in Smith or vice versa to arrive at some sort of combination. A very grave puzzle confronts a person of ordinary skill in trying to add to the hodgepodge the incomprehensibly non-analogous Van Gijsel et al. teaching.

Let us keep in mind that the Van Gijsel teaching and teachings of similar nature have been in existence for decades without anyone ever having any conceivable thought that they are relevant whatsoever to boat ramps and hull support assemblies. Put another way, the observation in the Official Action at page 6 — (i.e., the argument that Crifase et al. should be modified to incorporate a slideable connector from Van Gijsel et al. so as to accommodate boat or watercraft bottoms) — is contradicted by the long-standing existence of teachings similar to Van Gijsel et al. that have never penetrated the consciousness of those of ordinary skill in the art of watercraft ramps or hull-supporting assemblies. (Indeed, the old and long-known features of Van Gijsel et al. appear never to have penetrated the consciousness even of those of

extraordinary skill in the art.)

Two sound legal reasons exist for not adhering to the rejection of the Official Action. The first is extreme re-engineering that would be required to even come close to any line of argument as alleged in the Official Action. The other is the total non-analogous nature of Van Gijsel et al.

Regarding non-analogous art, the Court of Customs and Patent Appeals (CCPA) noted the following in *In re Wood*, 202 USPQ 171, 174 (CCPA 1979):

The determination that a reference is from a non analogous art is therefore twofold. First, we decide if the reference is within the field of the inventor's endeavor. If it is not, we proceed to determine whether the reference is reasonably pertinent to the particular problem with which the inventor is involved.

The Federal Circuit approved, adopted, and emphasized this two-prong analytical approach in *In re Clay*, 23 USPQ2d 1058, 1060 (Fed. Cir. 1992), where the court held that a prior art gel treated to get oil out of the ground was not analogous to that applicant's gel treatment to prevent loss of stored oil (i.e., liquid hydrocarbon).

The quintessential question is whether the unrelated non-analogous prior art would logically commend itself to the inventor. *Clay*, 23 USPQ2d at 1061, explains:

A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem. ... If it is directed to a different purpose, the inventor would accordingly have had less motivation or occasion to consider it.

As put in *In re Oetiker*, 24 USPQ2d 1443, 1446 (Fed. Cir. 1992), regarding

non-analogous art:

It has not been shown that a person of ordinary skill, seeking to solve a problem of fastening a hose clamp, would reasonably be expected or motivated to look at fasteners for garments. The combination of elements from non-analogous sources, in a manner that reconstructs the applicant's invention only with the benefit of hindsight, is insufficient to present a *prima facie* case of obviousness.

Here there is no logical reason to look to Van Gijsel et al. for a solution to applicant's variable hull support problem.

As put in *In re Deminski*, 230 USPQ313, 315-316 (Fed. Cir. 1986);

There is nothing in the prior art references, either singly or in combination, “*to suggest* the desirability, and thus the obviousness,” of designing the valve assembly so that it can be removed as a unit.

* * *

There was no suggestion in the prior art to provide Deminski with the motivation to design the valve assembly so that it would be removable as a unit. The board argues that if Pocock had followed the “common practice” of attaching the valve stem to the valve structure, then the valve assembly would be removable as a unit. The only way the board could have arrived at its conclusion was through hindsight analysis by reading into the art Deminski's own teachings. Hindsight analysis is clearly improper, since the statutory test is whether “the subject matter as a whole would have been obvious at the time the invention was made.” [emphasis supplied]

It has long been recognized that teachings of references must be taken in the context of the entire teaching of the reference when relying upon Section 103. See *In re Kotzab*, 55 USPQ2d 313, 317 (Fed. Cir. 2000).

Recognize that Van Gijsel et al. deals with a threaded rod connected to a strut via strut nut slidably adjustable in a channeled strut. It's a strut teaching and contains nothing

resembling applicant's "hull roller [or equivalent] mounted on said bracket for supporting a watercraft," as variously recited in all claims.

Nothing in the Official Action points to anything that would suggest that a person or ordinary skill would reasonably be expected or motivated (a) to look to strut teachings such as Van Gijsel et al. to get a solution to ramp hull support problems, (b) to consider strut teachings such as Van Gijsel et al. as a commendable source for study in solving ramp hull support problems, (c) to in fact borrow from strut teachings such as Van Gijsel et al. to solve ramp support problems, and/or (d) to consider strut teachings such as Van Gijsel et al. within the realm of "common practices" relevant to ramp hull supports.

We conclude that the combination rejection relied upon in the Official Action is factually and legally improper, and should be withdrawn — an action respectfully solicited.

Now let us look at individual claims.

Re Claim 1

It is emphasized that applicant's elongated channel rails are in laterally spaced condition and have a longitudinally aligned internal recess and a longitudinally aligned external slot for access into that recess. Absolutely nothing in the analogous art area contains any suggestion for such an arrangement. But add to that the fact that the analogous art has nothing to suggest hull support assemblies having at least one hull roller mounted on a bracket for supporting watercraft and the bracket then having not only a stabilizer part as applicant recites but also having a locking part. (Please recognize that the locking part in claim 1 does not

necessarily require the exact contours illustrated in the drawing. Nevertheless that locking part has to move through the rail slot into the internal recess for locking of the bracket to the rail.)

Applicable prior art lacks the noted features.

Re Claim 2

The locking part is described as a transverse plate longer than it is wide, and other features of that plate are recited — all contrary to anything that could possibly be gleaned from art that has any chance of being called analogous and thus properly considered. The hodgepodge of art is improperly used against the applicant.

Re Claim 3

Here the stabilizer part has to be a flange portion extending into the rail slot — again nothing at all is suggested in the prior art that is analogous.

Re Claim 4

Here is greater detail for the channel rail and the added recitation “wherein said internal recess has internal lock recesses bordered by said inwardly projecting border flanges and by said lip flanges, and wherein said locking part of said fastener comprises a transverse metal plate having a length longer than its width and equipped with locking protrusions for entry into said internal lock recesses of said channel rails to effect said locking engagement of said bracket to the rail.” Nothing on point is suggested by analogous prior art.

Re Claim 5

Here the Examiner objects to the clarity of the claim, but it is believed that the claim is extremely clear simply because making cross braces telescope-able does not necessarily conflict against fixing such telescope-able cross braces against telescoping movement on the ramp. We believe the claim is accurate in its recitation.

As the Examiner recognizes, claims must be considered as a whole. See *In re Ochai*, 37 USPQ2d 1127, 1131 (Fed. Cir. 1995); *W. L. Gore & Associates v. Garlock, Inc.*, 220 USPQ 303, 309 (Fed. Cir. 1983), *cert. denied* 469 U.S. 851 (1984).

Re Claim 6

Adding a winch arrangement to what is already recited in claim 1 does not in any way detract from the total non-obvious aspect of the claim as compared against all non-analogous art.

Re Claim 7

Similarly, a keel roller added maintains the non-obvious nature of the total claim.

Re Claims 8, 9, and 10

The added features that make the total claim whole help to emphasize the non-obvious nature of the whole.

Re Claim 11

There are features in claim 11 that are totally strange to the rejection advanced against the claim, not the least of which is the strange mounting bracket in claim 11. The

features of the claim make it impossible to arrive at any rejection of claim 11 by any conceivable proper combination of analogous prior art. (In fact, even non-analogous prior art clearly precludes a rejection under Section 103.)

Re Claims 12, 13, and 14

Each of these adds features totally missing from the basis for rejection alleged in the Official Action.

Re Claims 15, 16, 17, and 18

The base combination critically relies upon non-analogous art and the addition of Young No. 3,146,599 in no way suggests any basis for features and relationships that are characterized for the cartons of these claims. Nesting as recited in claim 18 is totally strange to the prior art. Young contains nothing to suggest it, and in fact, Young doesn't even contemplate packaging and shipment of total components including rails by any technique.

Summary

Crifase et al. only suggests channel pieces and cross pieces held together by stakes.

Smith deals with a basic tongue carrying lateral parts with hull support rollers. The lateral parts are adjustable as to position along the tongue.

Van Gijsel et al. deals with a connector for a threaded rod and strut, and totally lacks any structure as well as any suggestion for any structure for hull support. Thus, this reference is not art that any person of ordinary skill would consult for a solution to ramps for

watercraft. It is non-analogous art.

Combining the three references takes super-imaginative thinking and improper use of applicant's teaching to carefully select just the right fragments of the references and improper use of applicant's teaching as the blueprint to figure out some way of putting the fragments together — all contrary to what the law allows.

Conclusion

In view of the foregoing, it is submitted that this application is in condition for immediate allowance, and early favorable action of allowance is most courteously solicited.

Respectfully submitted,

Date: 13 Aug, 2004


Robert C. Baker
Attorney of Record
200 TCF Bank Building
12751 Nicollet Avenue
Burnsville, Minnesota 55337
Phone: (952) 882-9040
Fax: (952) 882-9038